IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

CONTEMPT PETITION NO.62 OF 2007

IN

SUIT NO.1175 OF 2007

Devyani Praful Bussa .. Petitioner.

Versus

Dazzle Impex Pvt.Ltd.
(Now known as Dazzle Master Disc
Pvt.Ltd.) And Anr. .. Respondents.

Mr.P.C.Kansara for petitioner.

Ms.N.S.Nappinai i/b.Shubhangi Chavan for respondents.

CORAM : S.C.DHARMADHIKARI, J.

DATE : 6th Sepetmber, 2007.

P.C.:

1. The petitioner has moved this Court alleging that the respondents have committed a contempt of an undertaking given to this Court and order made in terms thereof by refusing to vacate the premises after expiry of the leave and licence Agreement dated 30th April, 2004.

2. This matter was extensively argued by both sides on the last occasion. Ms.Nappinai appearing for the respondents after arguing the matter for some time and obtaining instructions stated that the respondents would be ready and willing to vacate the premises provided some extension is granted by this Court. She submitted that the extension be reasonable because the business being at commercial premises, cannot be vacated straightaway. Some arrangement will have to be made and suitable premises found out for shifting the business.

3. Accordingly, time was granted at her request till today. An affidavit has been filed by respondent No.4 on behalf of the 1st respondent and after narrating all facts and circumstances this is what is stated in Para 9 and 10 of the affidavit cum undertaking.

> "9. I further say and submit that without prejudice tot he above and without prejudice to the rights accruing to the 1st respondent under the letter dated 07.05.2004 issued by the petitioner, if this Hon’ble Court so directs, the 1st respondent hereby undertakes and agrees to hand over the peaceful and vacant possession of the petitioner within 12 months from today i.e.

06.09.2007. I further submit and undertake on behalf of the 1st respondent that during the said period, the 1st respondent shall pay the sum of Rs.54,450/- to the petitioner as License Fees.

10. I say and submit that the 1st respondent request that the abovementioned period may be granted for finding new premises to shift its machinery. I say and reiterate that the 1st respondent has spent nearly Rs.29,00,000/- (Rupees Twenty Nine Lacs only) in creating a sterile environment in the suit premises, which is mandatory for preparation of the CD stampers. I say and submit that if the above mentioned request is not granted to the 1st respondent, the 1st respondent will suffer irreparable loss and damage as its business will come to a standstill and the 1st respondent may not be able to recover from such loss."

4. A copy of this affidavit cum undertaking has been duly served on Mr.Kansara. Mr.Kansara after obtaining instructions from the petitioner, who is present in Court states that the petitioner is not agreeable to give one years time to the respondents to vacate the premises.

However, after taking instructions from the petitioner, he leaves the matter to the Court.

5. The respondent No.1 is represented by respondent Nos.3 and 4. Both, although are present in Court, after some arguments, state that they would be satisfied if eight months extension from today is granted.

6. In my view, although this Court does not encourage such breaches and violations nor does it approve the conduct of parties, it can regulate and restrict their occupation of the premises. Despite clear undertakings, the premises are not handed over, still, in the peculiar facts of this case, when genuine and bonafide reasons are set out for not complying with the undertaking, a lenient view has been taken. This Court, in these peculiar circumstances and accepting the unconditional apology on behalf of the respondents, although holding that they are guilty of contempt, no sentence is being pronounced by accepting the unconditional apology. The sentence is also not pronounced because, although the breach is admitted, now an undertaking is given that the premises would be vacated immediately after the period, stipulated in this Court’s order is over. The parties have further undertaken not to seek any extension under any

circumstances.,

7. In the light of the above, while closing the contempt proceedings, the following order is passed :-

> "On the request of the respondents, time to vacate the premises is granted till 31st May, 2008."

8. The respondents seek this extension and while seeking it, have specifically stated before me that the 1st respondent Company is in use, occupation and possession of the said premises and no rights have been created in favour of any third party nor any third party is in possession of the said premises. They shall not induct any third party or place anybody in possession otherwise till 31st May, 2008.

9. The respondents would continue to pay a sum of Rs.54,450/- till 31st May, 2008. Further, the respondents to clear off all arrears within a period of two weeks from today by forwarding a pay order in favour of the petitioner. The monthly sums hereafter shall also be paid by Demand Draft/Pay Order in favour of the petitioner.

10. Needless to clarify that if the respondents do not vacate the premises on or before 31st May, 2008, then, after expiry of the said period/date, the petitioner can take physical possession of the premises and if necessary seek police assistance in that behalf.

11. The arrears are from February, 2007 and the respondents undertake to clear the same within a period of two weeks from today. This order is passed without prejudice to the rights and contentions of both sides and shall not in any manner influence the rights of parties, including that of the respondents.

12. Contempt Petition is disposed of.

(S.C.Dharmadhikari, J.)